IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

WA.No. 909 of 2007()

AGAINST THE JUDGEMENT IN WPC.6279/2007 Dated 26/02/2007

APPELLANTS: PETITIONERS

1. GILBERT D'SOUZA,
   RESIDING AT FLAT NO.A1, SUVARAG APARTMENTS,
   HARITHA NAGAR, CHAMBAKARA, COCHIN 38.

2. V.UNNIKRISHNAN, RESIDING AT FLAT NO.A3,
   SUVARAG APARTMENTS, HARITHA NAGAR,
   CHAMBAKARA, COCHIN 38.

   BY ADV. SRI.A.M.SHAFFIQUE
   SRI.E.K.NANDAKUMAR
   SRI.A.K.JAYASANKAR NAMBIAR
   SRI.ANIL D. NAIR
   SMT.A.SIRJI

RESPONDENTS: RESPONDENTS

1. STATE OF KERALA,
   REPRESENTED BY ITS SECRETARY (REVENUE),
   SECRETARIAT, THIRUVANANTHAPURAM.

2. THE TAHSILDAR (ASSESSING AUTHORITY
   UNDER THE BUILDING TAX ACT), KANAYANNUR TALUK,
   ERNAKULAM.

SR.GOVERNMENT PLEADER SMT.MEERA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 23/5/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T. SANKARAN, J.

W.A. NO. 909 OF B 2007

Dated this the 23rd day of May, 2007

JUDGMENT

H.L.DATTU, C.J.

Aggrieved by the order of assessment passed by the Tahsildar under the provisions of the Kerala Building Tax Act and the demand notice issued pursuant to the completion of the assessment, the appellants were before this Court in W.P.(C) No.6279 of 2007. The learned Judge by the impugned judgment dated 26th February, 2007 has rejected the Writ Petition solely on the ground that the petitioners have an alternate remedy of filing an appeal under the Act itself. Being aggrieved by that judgment, the appellants are before us in this appeal.

2. The learned counsel for the appellants would vehemently contend before us that the Tahsildar had no authority of law to pass an order of assessment under the provisions of the Kerala Building Tax Act and, therefore, the learned single Judge was not justified in relegating the writ petitioners to file an appeal against the order of assessment passed by the Tahsildar.

3. In our view, even the aforesaid submission made by the learned counsel for the appellants can be canvassed by the appellants in the appeal that may be filed by them before the first appellate authority.

4. In view of the above, we do not see any error in the order passed by the learned single Judge. When the Statute specifically provides an alternate effective and efficacious remedy against the order of assessment passed by the Tahsildar, the

appellants should not have filed a Writ Petition before this Court.

5. For the aforesaid reasons, the appeal filed by the appellants requires to be rejected and is rejected. However, liberty is reserved to Sri.Unnikrishnan and seven others to prefer an appeal before the first appellate authority within a month's time from today. If such an appeal is filed within the time granted by this Court, the first appellate authority shall decide the same on merits.

6. The second instalment that is payable by the appellants is on 26.5.2007. Because of the pendency of the Writ Appeal before this Court, the appellants have not deposited that amount. In view of that, we grant a month's time to the appellants to pay the second instalment as demanded by the Tahsildar in his notice of demand dated 24th January, 2007 and the appellants shall pay the second instalment on or before 26th June, 2007. The appellants are also at liberty to make appropriate stay petition before the first appellate authority and if such a stay petition is filed, the appellate authority will consider the same in accordance with law. All other contentions raised by the parties are left open.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/